

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2077.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	December 15, 2004
DATE OF REPORT:	January 14, 2004
REQUEST FOR RECONSIDERATION:	yes/revised February 11, 2004
DATE OF CLOSURE:	May 24, 2004

**COMPLAINT ISSUES:**

Whether the Rochester Community School Corporation and the Joint Educational Services in Special Education (JESSEE) violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written.

**FINDINGS OF FACT:**

1. The Student is fourteen years old and is eligible for special education and related services as a student with multiple disabilities.
2. The Complainant alleges that the School has failed to do the following: complete a physical therapy evaluation within the first four weeks of school; implement physical therapy (PT); implement adaptive physical education (PE); and secure a DynaVox (system for augmenting communication skills) for the Student.
3. The August 11, 2003, case conference notes state that the PT needs of the Student will be determined after receiving a new PT evaluation report, which is to be completed within the first four weeks of school—pending upon the availability of a new physical therapist (therapist) who is able to train the staff on how to use the Hoyer Lift. After the new PT report is received, the CCC will reconvene to determine PT services for the Student. The Complainant requested a new PT evaluation and a new therapist for the Student because she was not pleased with the School therapist. The School complied with the Complainant's requests, and the Student was evaluated for PT services on August 19, 2003, and on October 6, 2003.
4. The CCC reconvened on November 6, 2003, to discuss the PT report and to determine PT services for the Student. The CCC identified a need for PT services for the Student twice a month, thirty minutes each session. A new therapist agreed to provide PT and to begin PT services if the Director was able to hire her as a full-time therapist with the special education cooperative (the Cooperative). By December 18, 2003, the therapist rescinded her offer once the Director had made it clear that the Cooperative could not add a position, primarily due to contract obligations with an area hospital. The School has not been able to find a new therapist willing to provide PT for the Student.
5. The Director sent a letter to the Complainant, dated December 16, 2003, which stated: all attempts to secure a new therapist had been unsuccessful; the Cooperative could only offer their qualified therapist to provide the PT outlined in the November 6, 2003, IEP; and that additional PT sessions would be

added to make up for times missed. The Director sent a second letter to the Complainant, dated, December 18, 2003, which stated her understanding that the Complainant did not want the School therapist to provide PT for the Student thereby preventing the School from implementing the PT component of the IEP. The Director asked the Complainant to call her if she changed her mind and she would arrange for therapy to begin immediately. The Complainant wrote a letter of response to the Principal, dated December 17, 2003, which stated that she did not want the School therapist to be involved in the Student's program.

6. The IEP lists objectives, benchmarks, and an annual goal with regard to the Student's use of a DynaVox. The IEP states that the annual goal is dependent upon the availability of a DynaVox. The July 31, 2003, case conference notes state that the Complainant will purchase a DynaVox to be used by the School, but asked that the School temporarily provide one for the Student to use since the Complainant will not have her DynaVox by the start of the school year. The School borrowed a DynaVox from the Promoting Achievement Through Technology and Instruction for All Students (PATINS) Project and renewed the DynaVox loan twice; PATINS denied the third renewal request and the School returned the DynaVox on January 5, 2004.
7. The August 11, 2003, IEP simply states that the Student will be enrolled in PE. The Student has been participating in PE since the start of the school year. An aide assists the Student during PE and the instructor adapts PE to meet the Student's abilities.
8. Notes from the August 11, 2003, CCC meeting indicate the School agreed to search for a certified adaptive physical education instructor to provide an in-service training for staff on adaptive PE. Notes from the November 6, 2003, CCC meeting indicate the School had found a certified PE instructor and that the in-service training was scheduled for some time in January of 2004; the Complainant signed this IEP. The in-service training date has now been established and will take place January 30, 2004.

## **CONCLUSIONS:**

- 1.a. Findings of Fact #3, Fact #4, and Fact #5 indicate the CCC reconvened and determined PT services for the Student. The School offered to provide PT services with a qualified therapist; the Complainant has declined the offered services. Therefore, a violation of 7-27-7(a) is not found with regard to PT.
- 1.b. Finding of Fact #6 indicates the CCC determined that the Complainant will purchase a DynaVox to be used by the School, and that the School will temporarily provide a DynaVox for the Student to use. The IEP states that the annual goal of the DynaVox is contingent upon the availability of one. Where an ambiguity exists in an IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. Therefore, a violation of 7-27-7(a) is found with regard to the use of assistive technology.
- 1.c. Findings of Fact #7 and Fact #8 indicate the Student has been enrolled in PE since the beginning of the school year. The School has scheduled an in-service training for staff by a certified adaptive PE instructor. Therefore, no violation of 7-27-7(a) is found with regard to adaptive PE.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

Rochester Community School Corporation and the Joint Educational Services In Special Education (JESSE) shall, no later than **February 20, 2004**, convene a case conference committee (CCC) meeting to review and revise the student's IEP to determine whether and to what extent the Dynavox will be used. If the CCC agrees to continue its use, the School must make clear in the written report/IEP what steps it will take to ensure that

the Dynavox will always be available for the student. The School shall submit to the Division a copy of the CCC report and revised IEP no later than **March 5, 2004**. If the School decides to purchase a Dynavox, the School must submit to the Division documentation indicating that a purchase has been made to the Division no later than **April 5, 2004**.